

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Ricky Nichols, #300177,	)	C/A 3:04-23059-CMC-JRM
	)	
Plaintiff,	)	
v.	)	
	)	
Dr. Hitcherson and Warden Stan Burtt, Lieber	)	
Correctional Institution,	)	
	)	
Defendants.	)	
	)	

Plaintiff is an individual proceeding *pro se* in this court. Plaintiff's suit alleges Defendants were negligent in their treatment of an indeterminate leg infection while Plaintiff was incarcerated at Lieber Correctional Institution. This action was originally filed November 23, 2004 against Dr. Hitcherson, and was amended in February, 2005 to add the Warden of Lieber Correctional Institution.

In accordance with the court's order of reference, 28 U.S.C. § 636 (b), and Local Rule 73.02 (B)(2)(d) (D.S.C.), this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pre-trial proceedings and a Report and Recommendation. On June 13, 2005, the Magistrate Judge issued a Report recommending dismissal of Plaintiff's complaint without prejudice pursuant to Fed. R. Civ. Proc. 41(b) for failure to prosecute the action. The Report advised Plaintiff of the procedures and requirements for filing timely objections to the Report and Recommendation. On July 8, 2005, Plaintiff filed what this court has construed as a motion for extension of time to respond to the Report and Recommendation of the Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

The court has reviewed the complete record in this matter, including the pleadings, Report and Recommendation of the Magistrate Judge, and the applicable law. The court agrees with the Report's analysis of Plaintiff's claims. Plaintiff has not only failed to serve the original defendant, Dr. Hitcherson, within the time period provided for in the Rules of Civil Procedure, *see* Fed. R. Civ. Proc. 4(m), he has failed to comply with several orders of the Magistrate Judge regarding bringing this suit into proper order, and has wholly declined to provide any sufficient response to Defendant Burtt's motion to dismiss, despite instructions by the Magistrate Judge on the necessity and proper form in which to do so. Accordingly, the Magistrate Judge's Report and Recommendation is adopted in full and incorporated into this Order.

IT IS THEREFORE ORDERED that Plaintiff's motion for an extension of time to respond is **denied** and the Complaint is dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie

CAMERON McGOWAN CURRIE

UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
August 16, 2005

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